

TITLE 11. DEPARTMENT OF JUSTICE

NOTICE OF PROPOSED RULEMAKING

PROPOSED REGULATORY ACTION

NOTICE IS HEREBY GIVEN that the Department of Justice (DOJ) proposes to adopt the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed action. The DOJ proposes to adopt sections 968.97 and 968.99, and amend sections 968.20 and 968.60 in Title 11, Division I, Chapter 12.4 of the California Code of Regulations (CCR).

PUBLIC HEARING

The DOJ has not scheduled a public hearing on this proposed action. However, the DOJ will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the DOJ. The written comment period closes at 5:00 p.m. on May 3, 2004. The DOJ will consider only comments received by that time. Submit comments to:

Mail:	Steven Teeters, Analyst Department of Justice Firearms License and Permit Unit PO Box 820200 Sacramento, CA 94203-0200 or
Email:	Steven.Teeters@doj.ca.gov or
Fax:	(916) 227-3700 Attn: Steven Teeters

AUTHORITY AND REFERENCE

Penal Code sections 12125 through 12133 authorize the DOJ to adopt regulations to comply with the mandate to certify independent laboratories to conduct specified tests of handguns and to establish and maintain the DOJ roster of certified handguns. This includes establishing procedures for laboratory certification, creating handgun testing reporting standards, establishing and maintaining the DOJ roster of certified handguns, and setting fees for the initial and renewal laboratory certifications and DOJ roster listings. With the passage of AB 2902 (Stats. 2002, c.

912), this authority was extended to adopting regulations to comply with the mandate giving the DOJ authority to retest up to 5 percent of handguns certified for sale, and establish guidelines for reinstatement testing of handguns that fail retesting. These amendments will implement, interpret and/or make specific section 12131 of the Penal Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

PC sections 12125 through 12133 require the DOJ to certify independent laboratories to conduct testing of handguns and to establish and maintain a roster of handguns that have been tested and certified as not being unsafe.

This law allows the DOJ to annually retest up to 5 percent of the handguns listed on the Roster of Handguns Certified for Sale. The DOJ may also allow testing and reinstatement of handguns removed from the Roster of Handguns Certified for Sale that failed the initial retest.

Section 968.20 adds definitions of new terms, that are found in regulation or Penal Code, to the Definition of Key Terms section.

Section 968.60 informs DOJ-certified test laboratories that they must participate in the retesting and reinstatement testing process or risk losing their certification.

Section 968.97 establishes the process by which the certified handguns will be selected for retesting, the process by which a handgun which fails retesting will be removed from the Roster of Handguns Certified for Sale (as well as all other “similar” handguns that were approved by the DOJ without separate testing), and the process by which the affected parties will be notified of a failed retest.

Section 968.99 establishes the process by which a handgun manufacturer, importer, fully licensed wholesaler, distributor, or dealer may request a reinstatement test of a handgun that was removed from the Roster of Handguns Certified for Sale after a failed retest. Finally, this section states that persons who paid fees associated to a Roster listing, who subsequently have that handgun removed from the Roster as a result of retesting, will not be refunded any fees.

DISCLOSURES REGARDING THE PROPOSED ACTION

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Cost or savings to any state agency: The DOJ will be responsible for funding the retesting program.

Cost or savings in federal funding to the state: None.

Mandate on local agencies and school districts: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: Limited. Only “responsible parties” as defined in regulation would be eligible to request reinstatement testing. Reinstatement testing would be optional, not required, and would only be an option if a previously approved handgun failed subsequent retesting.

Adoption of these regulations will not:

1. Create or eliminate jobs within California
2. Create new businesses or eliminate existing businesses within California; or
3. Affect the expansion of businesses currently doing business within California.

Significant affect on housing costs: None.

Significant affect on small businesses: Limited. See “Cost impacts on a representative private person or business” subsection.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), no reasonable alternative that was considered or that has otherwise been identified and brought to the attention of the DOJ would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations. Any persons interested in presenting statements or arguments with respect to alternatives to the proposed regulations may do so during the written comment period.

CONTACT PERSONS

Inquiries concerning the proposed administrative action may be directed to:

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Firearms License and Permit Unit
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Steven.Teeters@doj.ca.gov
Telephone (916) 227-0163
Fax (916) 227-3700
Attn: Steven Teeters

The backup contact person for these inquiries is:

Lesa Saville, Manager
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Firearms Information Services Section
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AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The DOJ will have the entire rulemaking file available, upon completion, for inspection and copying throughout the rulemaking process. Please visit www.caag.state.ca.us/firearms/regs/index.html to obtain copies of the proposed text of the regulations, the initial statement of reasons, the modified text of the regulations, or other information upon which the rulemaking is based. Inquiries concerning the substance of the proposed regulations may be directed to Steven Teeters.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the DOJ may adopt the proposed regulations substantially as described in this notice. If the DOJ makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the DOJ adopts the regulations as advised. Please visit www.caag.state.ca.us/firearms/regs/index.html to obtain copies of any modified regulations. The DOJ will accept written comments on the modified regulations for 15 days after the date on which they are made available. You can obtain a written copy of the documentation by contacting Steven Teeters.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, the Final Statement of Reasons will be available at www.caag.state.ca.us/firearms/regs/index.html. You can obtain a written copy of the documentation by contacting Steven Teeters.